

AGRICULTURAL LABOR RELATIONS ACT
Employer Questions & Answers
Remedies & Settlements

What Kind of Remedy Can I Expect if I am Found to Have Violated the Law?

The Board imposes standard remedies so that anyone charged with violating the Act will know in advance what to expect if the alleged violation is proved. Remedies are of two types - monetary and non-monetary.

Standard non-monetary remedies include:

- Cease & Desist Orders (compelling the wrongdoer to cease engaging in the unlawful act);
- Reinstatement (offering to reinstate a discharged employee to his/her former, or substantially equivalent, position);
- Posting, mailing, and/or reading of the Board's notice informing employees of the outcome of the case.
- Orders to bargain in good faith upon request of employees' certified bargaining representative.

Standard monetary remedies include:

- Backpay (compensation for lost wages in the amount the employees would have earned but for the unlawful discharge, failure to hire or rehire, or other job reprisal).
- Bargaining makewhole for failure to bargain in good faith, but only where the Board deems such relief appropriate.

How Does the ALRB Know What Amount is Owed for Violations Involving Loss of Work? (i.e, Discharge, Failure to Hire or Rehire, or Reduction in Hours or Rate of Pay)

With the assistance of the employer, the Board determines what the employee would have earned but for the unlawful act. That amount represents "gross" backpay which is then reduced by whatever wages the employee received from interim employment with a different employer. That amount may be subject to further reduction, or elimination altogether, if it can be shown that the employee either failed to make reasonable efforts to secure interim employment or willfully concealed interim earnings.

When Does the Backpay Period End?

An employer's liability for backpay continues until the employer offers to reinstate the employee or restore the status quo of the employee.

When Does the Board Award the Makewhole Remedy for a Violation of the Duty to Bargain?

When the Board finds that an employer has failed to bargain in good faith, the law gives the Board discretion to make employees whole. Makewhole is the difference between what employees actually earned and what they likely would have earned had good faith bargaining resulted in a collective bargaining agreement covering hours, wages, and other terms and conditions of employment.

How is the Makewhole Award for a Bargaining Violation Calculated?

One approach is to look to similar agricultural operations where there is an existing collective bargaining agreement and, on that basis, develop a “model” contract; that is, the contract the employer likely would have entered into had the employer bargained in good faith. IF the wage/benefit schedule of the violator meets or exceeds the “model” contract, there is no dollar liability and the employer is merely directed anew to bargain in good faith.

Does the Board Have a Settlement Policy for Unfair Labor Practices?

Yes. Recognizing that labor disputes create dissension in the workplace, and pose a potential for protracted and costly litigation, it is the policy of the ALRB to encourage and to facilitate settlement.

When and How Can I Settle My Case?

At any time after a charge is filed. The Regional Director is always available to discuss settlement or to assist you in structuring and appropriate settlement. Contact the Regional Office to either make an offer or request a time to discuss settlement. Provide documentation, if requested, to support the settlement.

Are There Limits on the Terms of Settlement?

Yes. The terms of settlement must further the purposes and policies of the ALRA. If Board approval is required, the Board must make that determination. Terms vary. Installment payments, provided the full amount is secured, and reduced amounts are examples of terms which may be justified in a particular case.

The Board looks most favorably on settlements agreed to by respondent, the General Counsel and charging party. Such settlements will usually require a notice provision and reinstatement if appropriate.

Can I Challenge the Remedy?

A remedy ordered by the Board can only be challenged by appealing the Board’s decision to a California Court of Appeal.

THE MISSION OF THE ALRB

THE AGRICULTURAL LABOR RELATIONS ACT (ALRA OR ACT) WAS ENACTED FOR THE PURPOSE OF PROVIDING A PROCESS FOR THE PEACEFUL AND ORDERLY RESOLUTION OF AGRICULTURAL LABOR DISPUTES. THE ALRB BELIEVES THAT THE RESOLUTION OF DISPUTES AT THE EARLIEST STAGES BEST SERVES BOTH LABOR AND GROWERS.

OFFICES

AGRICULTURAL LABOR RELATIONS BOARD

REMEMBER, THE ALRB IS ONLY A PHONE CALL AWAY

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Please call for answers to your specific questions, or for additional brochures.

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